



# Transcopyright: Pre-Permission for Virtual Republishing

*Preliminary Short Version.*

*Note that CERTAIN KEY WORDINGS ARE NOT FINALIZED.*

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## SUMMARY

The on-line copyright problem may be resolvable by a simple, sweeping permission method. This proposed system, which anyone may use, allows broad re-use of materials in exchange for automatic tracking of ownership. Payment goes to the original publisher and credit to the original author. Nothing is misquoted, nothing is out of context (since the original context is immediately available), and users are not spied upon.

A wording and an abbreviation for this permission system are proposed here.

## INTRODUCTION

Someone who asks, "How do we keep people from stealing food?" is asking you to consider only his side of the issue, without addressing underlying problems. But it might be sensible to ask another question in reply. If we ask, "How can the people obtain food?", perhaps both problems can be solved together.

That is how I see the issue of copyright in digital media. Those who merely ask, "How do we prevent copyright infringement?" are only asking the first question without addressing the second. There is a hunger for the re-use of media. If we can find a legitimate way to feed this hunger, then perhaps the stealing will not be necessary.

Today's central controversy seems to be the question of how to manage copyright and royalty on the sale of digital content.

The standard question has been, "How do we prevent infringement?" If we re-frame the question as "How can we allow re-use?", the solution may be simpler and more powerful than everyone thinks, with benefits for everyone.

This reformulates an idea which occurred to the author in the fall of 1960, and which since then has been an implicit part of the Xanadu Project (1), an ambitious system of hypermedia publishing servers with deep version management. Because the project has been controversial and beset with difficulties, our fundamental copyright proposal was not understood. And because this method was embedded in the software that had been designed for the Xanadu project, it was not recognized or expounded as a separate legal permission doctrine.

In this paper, we now separate that copyright method from its software history, and present it as a method anyone can use. It is a legal permission doctrine with far-reaching consequences, whose benefits may be considerable.

## THE OBJECTIVE

From the beginning, the objective of Project Xanadu was to facilitate a new kind of literature: a new populist medium, a many-to-many publishing system, not centralized in editorial and publishing companies, but open to anyone. It was intended to create a new kind of freedom of the press, and make possible a deeper understanding of published materials (2).

But this would not mean simply electronic availability of closed documents; we would also need to *re-use* existing materials, and the computer could help keep this re-use orderly (and do so without spying on users).

The idea was to preserve integrity, copyright and royalty for digital materials, yet allow everyone freely to re-use these materials, which would retain their identity at all times. By allowing everyone to republish all materials, this would effectively define a new system of fluid, digital transmedia, with universal freedom of re-use and visualization. All different republications could in principle be viewed side-by-side by the user, thus leading to greater understanding of the material and of the

points of view of the different documents, their authors and republishers.

The scheme is simple: under this arrangement, everyone is free to republish digital materials virtually, as quotations, anthologies and collages, provided that the republication is *virtual*: that is, provided that the republisher only provides instructions for acquisition and assembly of the parts, and *each copy of previously-published bytes is separately purchased from the original publisher(s) at the time of delivery*. A republisher only distributes pointers showing how to obtain the material, and in what new context(s) to place the material; each recipient buys these materials independently.

This method provides each receiving party with a properly-owned, independent copy of the materials, all purchased anew from the original publisher. What may be just as important, it provides incentives for participation and a method for honest re-use in a system from which all benefit.

## A PERMISSION DOCTRINE

What is proposed here turns out actually to be, at its center, a permission doctrine. A new permission doctrine may be easily added to our culture; a variety of permission doctrines are already popular, such as “shareware” and “all rights reserved, except that churches may reprint freely.”

In this proposed permission doctrine, the copyright holder gives permission for republication, PROVIDED THAT the material is sent to users only as an address for the material being republished, indicating what material is to be included in what new context, and inviting the recipient to purchase the content bytes anew from their present publisher. When a recipient purchases material, the material is sent with identifiers as to its origin; and the user has software enabling these identifiers to be kept. This has a number of benefits: (1) the user knows the origin; (2) this identification can be part of a proof of purchase; (3) in principle, any recipient may republish in the same fashion, ad infinitum.

## LONG FORM PERMISSION

To allow this, the copyright holder must therefore make a statement like the following. (Note that I am still tinkering with the provisions and wording.)

**“Permission is granted to all parties in the universe to re-publish the bytes of these materials virtually in new on-line contexts, provided (1) that such virtual republication consists of transmitting only a purchase address for bytes to be included in a particular new context; and provided (2) that the present publisher is notified of any such virtual republication.”**

This may be adequate to achieve the desired result, as we will consider below. It also leaves room for a number of possible variations.

## IRONICALLY SIMPLE

This may seem over-simple, when mighty technical and legislative solutions are being sought by so many parties. But it shifts the ground of the issue.

The new ground becomes the issue of *context relinquishment*-- the publisher's willingness to allow the material to be used in unpredictable contexts, in return for royalty, credit, and the immediate availability of the original contexts for further purchase, inspection and comparison.

This is a tradeoff. We expect publishers-- especially small, non-traditional publishers and self-publishing individuals-- to be invigorated by the notion of their materials being available for universal sale and re-use, to their benefit. More traditional publishers and authors may hesitate, not recognizing that all the traditional objectives may be satisfied by this system.

## IMPLIED ASPECTS

Implied in this method are certain other aspects of implementation. For instance, the user must be given a receipt for each portion purchased, so that the received materials may be proved a legitimate copy. A survivable memorandum of origin (the address from which purchased) must also accompany the repurchased materials, making virtual republication possible once again (by the new recipient). And the republisher must notify the original publisher of the republication, so that these re-uses may be seen.

## SUPPORTING SOFTWARE ASPECTS

This permission doctrine has certain minimal requirements for supporting software. Certain unusual software features are required:

**Server-side software:** The server program should have the ability to sell materials in small amounts, ideally at a fixed price per byte, delivering the materials with a receipt and identity notification.

**Client-side software:** Certain detailed features of an unusual nature are required in the user's programs.

1. *Viewer program with purchase methods.* Any recipient must have a viewer program ("client software") which has methods for purchasing the required bytes, and which retains the identity of bytes purchased.

2. *Editing program which retains identities of portions.* Any republisher must have an editing program which retains the original identity and addresses of the edited materials, even as they become cut down (or re-expanded by additional purchases from the original).

3. *Stripping program.* After an author has finished creating a document which is to include republished material, a special stripping program (or feature) must then prepare the document for skeleton transmission, stripping out the actual bytes and substituting the original addresses in the necessary format for their repurchase.

## OWNERSHIP OF EACH FINAL COPY

The recipient who purchases the suggested materials owns a final copy,

like any book, each portion legally purchased. Even if the materials are later withdrawn from sale, each copy already acquired in this way retains its ownership status as the possession of the recipient.

## COMPATIBILITY, INTEROPERABILITY

Note that any party may offer transcopyright; and note that *different variations of this arrangement*, with different details of availability, *may be mixed and matched in a given document* (see below). Regardless of such variations, a legitimate mixed copy is still owned by the final recipient.

## THE PROPOSED FORMAT AND ITS LEGAL STATUS

I propound for this permission system an extremely simple presentational format. A publisher signifies participation by the following notice, in the place of the usual copyright notice:

Trans©(year)(name)

For example,

Trans©1995 Irving Snerd

This is a shorthand form of the long-form permission stated earlier, so that the publisher is spared having to include it.

Some distribution agency or availability scheme should also be specified by the transcopyright grantor, as, for example:

Trans©1995 Irving Snerd; administered Dun & Bradstreet.

or

Ziff-Davis Trans©1995 Irving Snerd.

Either of these notifications tells all parties, in condensed form, (1) that copyright is claimed; (2) that transcopyright permission is granted, and (3) where the materials may be bought.

It will be noted that the traditional copyright notice

©1995 Irving Snerd

is FULLY CONTAINED within the transcopyright notice, and so is still present.

However, note also that this traditional copyright notice no longer has its former force in law, since by today's law an author now establishes copyright automatically by creating a work; so the copyright notice is now regarded as being a courtesy and a convenience. Thus we are offering the transcopyright permission as a further courtesy, so that all

parties will know how they may republish.

By what authority is this a shorthand of the longer version? I hereby *declare* it to be such a shorthand form, just as the terms “shareware” and “copyleft,” declared by Bob Wallace and Richard Stallman respectively, have come to represent their respective permission doctrines, both now widely accepted and used. If others use the transcopyright notification with the intent given here, it will be recognized in law (like shareware and copyleft) as being synonymous with the longer permission notice.

## **VARIATIONS NOT COVERED; DIFFERENT JURISDICTIONS**

This arrangement is for on-line screen viewing and keepage of digital data, not for paper or other solid media.

A number of issues are not handled by this arrangement. These include byte modification (such as morphing, bitwise graphical operations, and merged re-use of audio samples into a fused, mixed, inseparable recording). It does not involve printout. It does not cover site licensing for multiple users. It does not include model releases, talent releases, or other forms of permission not strictly part of copyright. It does not state how long materials will be offered for sale.

Who settles these details? This is within the scope of variation of the idea: different forms of transcopyright may be offered by different parties-- individuals, companies, or other administrations. Any party offering transcopyright may bundle different kinds of permission into their own systems. (For instance, the contracts of Project Xanadu will have specific clauses with respect to length of availability, paper printout and site licensing.)

## **ENFORCEMENT AND BENEFITS**

This system is not automatically enforced, but neither is any other feasible electronic copyright system. It is no more or less enforceable than any other. The fact that it defines a convenient method for honest behavior, satisfying principal objectives of both publisher and republisher-- no longer “infringer,” but honest participant-- is a strong argument in its favor.

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